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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SCOTT MACKLES, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

BOAR'S HEAD PROVISIONS CO., INC.,

Defendant.

Case No. 13-CIV-4855 (HB)

**JOINT INITIAL REPORT AND
PROPOSED PRETRIAL
SCHEDULING ORDER**

Hon. Harold Baer

WHEREAS, by Notice dated July 25, 2013, the Court set an initial Pre-Trial Conference
to take place on September 12, 2013 at 4:00 PM;

WHEREAS, pursuant to the Court's Notice and pursuant to the Pilot Program for
Complex Civil Litigation, counsel for the parties met and conferred on September 3, 2013
regarding potential discovery, motion practice and a pre-trial schedule;

WHEREAS, the parties previously stipulated to and the Court ordered, on August 5,
2013, an extension of Defendant's time to answer or move against the Complaint, pursuant to
which Defendant's answer or motion is due on September 9, 2013;

WHEREAS, Defendant filed a Motion to Dismiss the Complaint in its entirety on
September 9, 2013, and Plaintiff informed Defendant that Plaintiff intended to file an Amended
Complaint;

THEREFORE, the parties provide the following Initial Report on the parties' positions
on the Pilot Project initial pretrial conference topics and a Proposed Pretrial Scheduling Order:

INITIAL REPORT

1. Discovery will not be stayed or limited pending dispositive motions. Document discovery will begin forthwith. The balance of discovery will begin 60 days from date hereof.

2. *Possibility of consent to trial before a Magistrate Judge.* The parties do not consent to proceed before a United States Magistrate Judge for trial.

3. *Possibility of communication/coordination between the Magistrate Judge and District Judge with respect to pretrial matters.* The parties agree that in the event that the District Judge refers matters or disputes to the Magistrate Judge, communication and coordination between the judges on pretrial matters is appropriate.

4. *Preliminary issues that are likely to arise that will require court intervention.*

Apart from the issues regarding a stay of discovery pending resolution of the Motion to Dismiss, the parties do not believe that there are any further preliminary issues requiring Court intervention at this time.

5. *Discovery.*

a. *Scope.* Any concerns or requests about the scope of discovery will be presented to the Court, resolved or referred to a magistrate judge.

b. *Data requests.* The Parties agree that any data requests should be subject to normal discovery procedures, which would allow for proper objections. There is no need for any special, additional discovery deadline on this matter. If any such deadline is set, it should apply the same to requests propounded by either side.

c. *Timing and sequence.* All proposals regarding the scheduling of discovery are set forth in the Proposed Pretrial Scheduling Order following this Initial Report.

f. *Limitations and scope.* The parties agree that the limits on requests for admission set forth in the Pilot Project Discovery Procedures (Part II.F) should be adopted.

g. *ESI.* The parties continue to meet and confer regarding the discovery of electronically stored information ("ESI"), and will submit a proposed order regarding ESI protocol no later than November 29, 2013. If the parties are unable to agree to an ESI protocol, they will make separate submissions on that date.

h. *Confidentiality order.* The parties will meet and confer regarding confidentiality of documents and information produced in this litigation, and will submit a proposed confidentiality order no later than November 29, 2013. If the parties are unable to agree to a proposed confidentiality order by that date, they will make separate submissions

i. *Foreign discovery.* The parties do not contemplate any foreign discovery at this time.

6. *Issues to be tried, bifurcation.* The parties respectfully submit that other than the issues related to class certification, it is premature to identify ways in which issues may be narrowed or bifurcated to make trial more efficient, or to propose a mini-trial on any particular issues.

7. *Class certification.* The parties have met and conferred regarding a procedure and schedule for class certification that is set forth in the Proposed Pretrial Scheduling Order following this Initial Report.

8. *ADR/mediation.* The parties do not believe at this time that mediation would be useful.

9. *Pleadings, including sufficiency and amendments, and the likelihood and timing of amendments.* The Proposed Pretrial Scheduling Order sets forth applicable dates for amending the pleadings.

10. *Joinder of additional parties, and the likelihood and timing of joinder of additional parties.* The Proposed Pretrial Scheduling Order sets forth applicable dates for joining additional parties.

11. *Expert witnesses.* The parties agree that experts and expert discovery may be appropriate to the litigation of this action. The Proposed Pretrial Scheduling Order sets forth the timing for the submission of expert reports and expert discovery.

12. *Damages.* Plaintiff seeks statutory damages pursuant to GBL § 349(h) for himself and the putative class, and equitable relief on behalf of the class, plus costs and attorneys' fees.

13. This case is added to the November 2014 Trailing Trial Calendar.

14. *The need for additional meet and confer sessions.* The parties will continue to meet and confer on an ESI protocol and confidentiality order.

PROPOSED PRETRIAL SCHEDULING ORDER

Event	
1. Plaintiff's Amended Complaint filed on or before	September 30, 2013
2. Defendant's Response to Amended Complaint filed and served on or before	October 20, 2013

3.	Plaintiff's Opposition to Defendant's Motion to Dismiss Amended Complaint, if any, served on or before	November 10, 2013
4.	Motion to Dismiss Amended Complaint, if any, fully briefed ¹	December 1, 2013
5.	Balance of discovery begins	November 19, 2013
6.	Last day to join additional parties	March 2, 2014 See my rules on this subject.
7.	Last day to add additional causes of action	April 1, 2014
8.	Last day to complete pre-class certification, non-expert discovery	April 1, 2014
9.	Plaintiff's Motion for Class Certification due	May 1, 2014
10.	Parties Disclosure of Expert Reports	June 1, 2014
11.	Completion of Expert Discovery	July 1, 2014

¹ There must be 60 days to decide dispositive motions, so dates affected by Motion to Dismiss will be figured from February 1, 2014.

12.	Defendant's Opposition to Motion for Class Certification due	June 1, 2014
13.	Plaintiff's Reply in Support of Class Certification Due	June 20, 2014
14.	Last day for fully-briefed dispositive motions ² to be in Chambers	August 20, 2014
15.	Trailing Trial Month	November, 2014

² Fully briefed dispositive motions include all opposition and reply briefs to dispositive motions.

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HON. HAROLD BAER, JR.

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IT IS SO ORDERED:

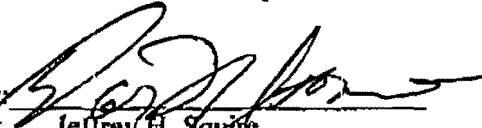
Dated: 9/24/13

Dated: September 24, 2013


The Honorable Harold Baer, Jr.
United States District Judge

Respectfully submitted,

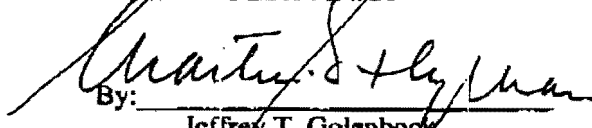
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